S.B. CIVIL WRIT PETITION NO.5511/2004

Gopal Lal. vs. Smt. Jamana Devi and ors.

Date : 24.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. AK Rajvanshy, for the petitioner.

Mr. JK Bhaiya, for the respondents.

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Heard learned counsel for the parties.

The petitioner/plaintiff are aggrieved against the order dated 5.11.2004 by which the trial court closed the petitioner/plaintiff's evidence, despite the fact that on 5.11.2004, the affidavit of one witness Ganga Ram was submitted by the plaintiff with a request that since the witness has gone at Loonkarsar and, therefore, he is not in a position to appear in the Court, therefore, time may be granted.

According to learned counsel for the respondents, the plaintiff was given ample opportunity to produce the evidence and he did not produce the evidence and, therefore, the trial court was right in closing the evidence of the plaintiff.

It appears from the order-sheet dated 18.10.2004 that on that day, the affidavit of Gopal Lal was produced and cross examination was also completed on that very day. On request of the plaintiff, the Court granted time for

further evidence of the plaintiff and fix the date 5.11.2004. On 5.11.2004, the plaintiff submitted affidavit of Ganga Ram and sought time to produce witness Ganga Ram for cross examination. Though the affidavit was filed on the day when the case was fixed for evidence but the court refused the cross examination of the witness and closed the evidence of the plaintiff. When on 5.11.2004, the affidavit of witness of plaintiff was filed by the plaintiff, then the Court could have adjourn the case at least for the next day to continue with the evidence in the case but simply, on the basis of adjournment sought earlier, the evidence of the plaintiff was closed ignoring the fact that the plaintiff took steps on 18.10.2004 and on the next date 5.11.2004 also.

In view of the above, this writ petition deserves to be allowed, hence allowed. The impugned order dated 5.11.2004 is set aside on payment of costs of Rs.1,000/- to the defendants by the plaintiff. The court may now fix the date for cross examination of the only witness Ganga Ram for which permission has been sought and the plaintiff shall not be granted further adjournment for evidence of the said witness Ganga Ram.

In view of the above order, the stay petition has become infructuous and as such, it is dismissed. The stay order granted by this Court on 9.12.2004 is vacated.

(PRAKASH TATIA), J.

S.Phophaliya